United Nations CAT/C/BEL/QPR/4

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.:General
15 June 2015

Original: English
English, French and Spanish only

Committee against Torture

List of issues prior to submission of the fourth periodic report of Belgium, due in 2017*

At its thirty-eighth session (A/62/44, paras. 23 and 24), the Committee against Torture established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations[1]

Articles 1 and 4

1. Further to the recommendations made by the Committee in its previous concluding observations (para. 8), please provide information on the steps taken to amend article 417 *bis* of the Criminal Code so that its legal definition of torture incorporates all the elements contained in article 1 of the Convention.

2. Please explain if, and eventually how, the rights contained in the Convention have been invoked in national courts, either as grounds for a case or as interpretative guidance for legal norms. Please cite examples, if any, of cases in which the provisions of the Convention have been invoked before and by the courts, and to what effect.

3. Please provide examples of judgements that can be considered relevant to the implementation of the provisions of article 4, and penalties that, in practice, take into account the grave nature of torture. Please also provide detailed information on the number and nature of the cases in which those legal provisions have been applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for any acquittal.

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

[1] Paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee and issued under the symbol CAT/C/BEL/CO/3.

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4. The European Agency for Fundamental Rights released a report detailing the experiences and perceptions of anti-Semitism in European Union member States. Of those polled in Belgium, 77 per cent responded that they considered anti-Semitism to be either "a very big problem" or "a fairly big problem". Please provide detailed information on the measures taken by the State party to combat anti-Semitism, including budgetary allocations, judiciary and police training, public outreach campaigns and legislative efforts.

5. Please provide detailed and disaggregated data regarding the number of complaints, investigations, prosecutions and sentences for hate crimes over the last five years. More specifically, the data should be disaggregated by crime charged for, age of alleged perpetrator, target category, alleged perpetrator category, sex, region, religion and year.

Article 2[2]

6. Further to the Committee's previous concluding observations (para. 9), please provide information on the steps taken to expedite the establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[3] Please also provide information on the measures taken to actively involve civil society in this process (see A/HRC/18/3, para. 100.9).

7. Please provide updated information on the measures taken by the State Party to ensure that all the provisions of the Convention have been incorporated into Belgian law. More specifically, please elaborate on efforts made: to allow the Convention to be invoked in the domestic courts; to give prominence to the Convention; and to raise awareness of the provisions of the Convention, not only in the legal and judicial system, but also among the public at large.

8. Further to the Committee's previous concluding observations (para. 11) and the State Party's follow-up thereto (CAT/C/BEL/CO/3/Add.1), please inform the Committee of any additional steps that ensure that all persons held in custody are provided with all the fundamental legal safeguards under the Convention from the very outset of their deprivation of liberty. More specifically, please elaborate on the measures taken with regard to the right to be informed in an appropriate language of the reasons for their detention; the right to have prompt access to a lawyer and to consult him or her immediately following their detention; the right to contact family members or other persons of their choice; and the right to have an independent medical examination performed without delay by a doctor of their choice.

9. In addition, further to the Committee's previous concluding observations (para. 12) and the State Party's follow-up thereto, please provide information on the appropriate measures taken to establish a standardized, computerized and centralized official register in which arrests are immediately and scrupulously recorded.

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[2] The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. Paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties reads: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

[3] See also A/HRC/WG.6/11/BEL/3, para. 5; A/HRC/18/3, paras. 9, 100.9 and 102.6; E/C.12/BEL/CO/4, para. 8.

10. Please provide information on the measures adopted to ensure that medical examinations of detainees that focus on past torture and ill-treatment are thorough and impartial. More specifically, please provide information on the measures that have been taken to ensure that the medical experts conducting such examinations use forms that comply with annex IV of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and provide a statement of opinion regarding their findings?

11. In the light of the Committee's concluding observations (para. 12) and the State party's follow-up thereto, please provide information on the monitoring and inspections carried out on a systematic basis to ensure compliance with the obligation in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly Resolution 43/173, annex).

12. Further to the recommendations made by the Committee in its previous concluding observations (para. 13) and the State party's follow-up thereto, please provide updated and detailed information on the measures taken:

(a) To establish a fully independent mechanism for the investigation of allegations of torture and ill-treatment and a specific register of allegations of torture and cruel, inhuman, or degrading treatment or punishment;

(b) To ensure that law enforcement officials receive training on the absolute prohibition of torture and that they abide by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[4]

(c) To further strengthen the supervision and monitoring mechanisms of the police force, particularly Committee P and its Investigation Service, which should be composed of independent experts recruited from outside the police force.

13. With regard to the Committee's previous concluding observations (para. 18), please provide information on the steps taken to effectuate the agreement with the International Committee of the Red Cross, to enable it to objectively evaluate the conditions of detention of persons held in connection with the fight against terrorism.

14. Please provide information regarding all investigations undertaken by the State Party, including the final outcome and any documents created in the context thereof, into allegations by the European Parliament that Belgian airports and aircraft were involved in the United States of America Central Intelligence Agency's extraordinary rendition programme.

15. Please provide detailed information on the measures taken to amend the Aliens Law in order to grant temporary residence to migrant women who are the victims of domestic violence and are undocumented or awaiting residence permits on the basis of family reunification. In addition, please provide detailed information on measures taken to ensure that migrant women with family reunification residence permits who are victims of domestic violence and are seeking to leave their husbands are not required to prove that they are employed, self-employed or have sufficient means of subsistence in order to obtain individual residence permits on their own.[5] Please also provide statistical data on complaints, investigations, prosecutions, convictions and the penalties imposed for acts of domestic violence, disaggregated by province, ethnicity, crime and age.[6]

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[4] Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990.

[5] See CEDAW/C/BEL/CO/7, para. 21; A/HRC/18/3, paras. 19, 21, 33, 50 and 57.

[6] A/HRC/18/3, paras. 100.51, 100.52 and 100.54.

16. Please provide information on the steps taken to further increase protection of and assistance to victims of trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations (NGOs) and the countries of origin. Please provide information on the steps taken to grant temporary residence permits to women and girls who are victims of trafficking, regardless of their ability or willingness to cooperate with prosecution authorities and to file a complaint.[7]

17. Please provide updated information, disaggregated by year, age, gender and ethnic origin or nationality of victims, the number of complaints, investigations, prosecutions, convictions and sentences in cases of human trafficking, since the consideration of the State party's previous periodic report.

Article 3

18. With regard to the Committee's previous concluding observations (para. 20), please provide information on the measures taken to strengthen the independence, impartiality and efficiency of the Inspectorate-General of the Federal and Local Police (AIG). More specifically, please provide information regarding the allocation of resources and the Inspectorate-General's capacity to monitor expulsions, and to receive and consider complaints. What measures has the State Party taken to enhance oversight, such as the use of video recordings and monitoring by NGOs?[8] Please also indicate which measures have been put in place to restrict the use of restraints during expulsion operations (see A/HRC/18/3, paras. 33, 46 and 101.23).

19. With regard to the Committee's previous concluding observations (para. 22), please provide detailed information on the measures taken to amend relevant laws so that the principle of non-refoulement is unconditionally respected. Please indicate the number of cases of refoulement, extradition and expulsion carried out by the State Party based on the acceptance of diplomatic assurances or equivalent, as well as any instances where the State Party has given diplomatic assurances or guarantees. More specifically, please disaggregate the information by year, nationality, gender, age and religion.

20. What is the minimum content of such assurances or guarantees, whether given or received, and what measures, with regard to subsequent post-return monitoring mechanisms, have been taken in such cases. Please provide details on:

(a) Policies put in place to clearly prevent the transfer of any non-national to another country when there are substantial grounds for believing that he or she would be in danger of being subjected to torture or cruel, inhuman, or degrading treatment or punishment;

(b) Measures taken to recognize that diplomatic assurances and monitoring arrangements cannot be relied upon to justify transfers when a substantial risk of torture exists.

21. Please provide data, disaggregated by year, age, gender, religion and nationality on:

(a) The number of asylum requests registered, approved and denied;

(b) The number of asylum seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin;

[7] See CEDAW/C/BEL/CO/7, para. 25.

[8] See CAT/C/BEL/CO/2, para. 6.

(c) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum seekers) and the countries to which the persons were expelled;

(d) Detailed information on the reasons for the returns;

(e) A complete list of the countries to which the persons were returned, disaggregated by year.

Articles 5, 6, 7, 8 and 9

22. Since the consideration of the State party's previous periodic report, please indicate whether the State party has rejected, for any reason, a request for extradition by another State in respect of an individual suspected of having committed an offence of torture, and whether it has started prosecution proceedings as a result. If so, please provide information on the status and/or outcome of such proceedings.

23. Please inform the Committee of any extradition treaties concluded with other States, and whether such instruments comply with article 4 of the Convention.

24. Please indicate what treaties or agreements on mutual judicial assistance have been concluded between the State party and other entities, including States, courts or international institutions, and whether, in practice, such agreements have resulted in the transfer of evidence relating to proceedings regarding torture or ill-treatment. Please provide specific and detailed examples.

Article 10

25. With regard to the Committee's previous concluding observations (para. 17), please provide information on the development and strengthening of training programmes to ensure that all officials, judges, law enforcement officials, members of the military and prison personnel are familiar with the provisions of the Convention and, in particular, that they are fully aware of the absolute prohibition of torture.

26. Please provide specific information on whether all relevant personnel, including health-care professionals who are in contact with prisoners and asylum seekers, receive regular and specific training on how to identify signs of torture and ill-treatment, including on the use of the Istanbul Protocol. More specifically, please provide information indicating year, resource allocation, number of training sessions to each sector and any legislative efforts.

27. In addition, please provide information on whether the State party has developed a methodology for assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and the results of those programmes. If the training programmes lead to a reduction in torture and ill-treatment, please provide information on the content and application of the methodology.

28. With regard to the Committee's previous concluding observations (para. 17), please provide information on the steps taken to include an explicit prohibition of torture in the Police Service Code of Ethics and to ensure that police officers observe the absolute prohibition of torture when performing their duties.

Article 11

29. With regard to the Committee's previous concluding observations (para. 15), please provide information on the measures taken to ensure that detention conditions in all places

of deprivation of liberty are in conformity with the Standard Minimum Rules for the Treatment of Prisoners,[9] in particular with regard to the steps taken:

(a) To alleviate overcrowding in prisons and all places of detention by, in particular, making use of non-custodial measures as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) To improve the infrastructure of prisons and all places of detention and to ensure that conditions of detention in the State party do not breed violence among prisoners;

(c) To separate the different categories of prisoners and to ensure that remand prisoners are separated from convicts and minors are separated from adults (see A/HRC/18/3, para. 44);

(d) To improve working conditions for prison staff and to ensure a level of service in prisons that would ensure that prisoners' fundamental rights are respected, even in the event of a strike.[10]

30. With regard to the Committee's previous concluding observations (para. 16), please explain what measures have been put in place by the State party to repeal the provisions of the amendments made to the Principles Act by the Act of 1 July 2013, which authorizes routine full body searches when a detainee has been in contact with the outside world. Does the State party make sure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person? What measures has the State Party taken to adopt precise and strict instructions to restricting the use of body searches (see A/HRC/18/3, para. 101.21)?

31. Please provide detailed information on the current level of implementation of the "Dupont Act".[11] Furthermore, please inform the Committee about the changes that have been achieved, in practice, due to the above-mentioned law and the challenges that remain before it can be fully implemented.

32. With regard to the Committee's previous concluding observations (para. 19), please explain what measures have been taken to ensure that detainees with mental health problems receive suitable care.[12] Has the State party improved the capacity of its psychiatric hospital services and facilitated access to mental health services in all prisons?[13] Please provide information on the measures taken to ensure that prisoner screening is in place to certify the mental state of the prison population, in conformity with the Standard Minimum Rules for the Treatment of Prisoners.

33. Further to the Committee's recommendation in its previous concluding observations (para. 21), please provide information on the application of the Dublin II Regulation, and on the steps taken by the State party to ensure that the detention of asylum seekers is used only as a last resort and for as short a time as possible and without excessive restrictions.

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[9] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[10] See A/HRC/WG.6/11/BEL/3, para. 50.

[11] Ibid., para. 43

[12] Ibid., para. 39; CRPD/C/BEL/CO/1, para. 29.

[13] See CAT/C/BEL/CO/2, para. 23; A/HRC/18/3, para. 103.22; CRPD/C/BEL/CO/1, para. 29.

Please provide information on the arrangements that the State Party has established and used as an alternative to detention for asylum seekers?[14]

34. With regard to the Committee's previous concluding observations (para. 25), please provide detailed information on the steps taken to establish a system of juvenile justice that fully conforms to the provisions of the Convention on the Rights of the Child, in law and in practice, and to ensure that persons under the age of 18 are not tried as adults.[15]

35. Please provide information on the State Party's efforts to comply with all of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the conditions at the Prison de Forest and the Prison d'Andenne.

Articles 12 and 13

36. Further to the recommendations in the Committee's previous concluding observations (para. 13) and the State party's follow-up thereto, please provide updated and detailed information on:

(a) The investigation into the case of Jonathan Jacob;

(b) The steps taken to conduct prompt, thorough, effective and impartial investigations into all alleged cases of brutality, ill-treatment and excessive use of force by law enforcement personnel, and to prosecute and sanction officials found guilty of such offences with appropriate penalties.

37. Please provide statistics, disaggregated by year, gender, age, ethnic origin or nationality and place of detention, including holding centres for migrants, on the number of complaints registered in connection with acts of torture or ill-treatment during the reporting period. How many formal investigations have been opened into alleged cases of torture and ill-treatment? Please provide information on open judicial proceedings and disciplinary procedures, as well as convictions, criminal sentences and disciplinary measures imposed. In that connection, provide examples of relevant judicial decisions or resolutions.

Article 14

38. With regard to the Committee's previous concluding observations (para. 23) and further to paragraphs 45 and 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide relevant information on:

(a) The measures of redress and compensation, including rehabilitation measures, ordered by courts and actually provided to victims of torture or their family members since the consideration of the last periodic report. Such information should include the years, number of claims submitted, number of claims settled, amounts awarded, and amounts actually paid in each case;

(b) The measures taken to ensure that all victims of torture are able to access remedy and obtain redress wherever acts of torture have occurred and regardless of the nationality of the perpetrator or victim. Please provide information on redress programmes, including programmes for the treatment of physical and psychological trauma, and other types of rehabilitation provided to victims of torture and ill-treatment, as well as on the allocation of adequate resources to ensure the effective functioning of such programmes. Please provide information on the extent to which collaboration with specialized NGOs

[14] See A/HRC/WG.6/11/BEL/3, paras. 71–73.

[15] See CRC/C/BEL/CO/3-4, paras. 82–83; A/HRC/WG.6/11/BEL/3, paras. 47, 48 and 50.

exists in this respect and indicate whether the State party provides financial and/or other support for its effective functioning.

Article 15

39. With regard to the Committee's previous concluding observations (para. 24), please provide information on the measures adopted to ensure that confessions obtained under torture or ill-treatment are not admitted in court proceedings, in accordance with article 15 of the Convention. What legislative amendments has the State Party enacted to guarantee that statements obtained as a result of torture or ill-treatment will not be used or invoked as evidence in any proceedings, except as evidence against the person accused of torture? Please indicate whether any officials have been prosecuted and punished for extracting confessions under torture and, if so, please provide details of cases and any penal or administrative sanctions imposed on those responsible. Please provide information on any cases in which the court has not accepted confessions or evidence obtained as a result of torture.

Article 16

40. With regard to the Committee's previous concluding observations (para. 26), please inform the Committee about the measures taken to ensure that electrical discharge weapons (Tasers) are used exclusively in extreme and limited situations.[16] Also, please provide information on whether the State Party has revised or adopted new regulations governing the use of such weapons and conducted any research on the risk deriving from the use of electrical discharge weapons. Has the State Party adopted a legal framework to govern the testing and approval for use of all weapons used by law enforcement personnel? Has the State Party taken any steps to relinquish the use of electrical discharge weapons (see A/HRC/WG.6/11/BEL/3, para. 23)?

41. Further to the Committee's recommendation in its previous concluding observations (para. 27), please indicate which actions and measures have been taken to expressly prohibit corporal punishment of children in all settings, and, as a matter of priority, in the family and non-institutional childcare settings.[17] In addition, please provide information on allocation of resources, legislative measures, advocacy campaigns and training of officials, law enforcement officers and medical personnel to combat corporal punishment of children.

42. Please provide updated information on measures taken to adequately prevent, combat and punish violence against women. In that respect, please indicate whether corporal punishment of girls and women in all settings, including schools, institutions and the home, is explicitly prohibited under national law and, if not, what efforts are being undertaken to remedy that.[18] In addition, please provide information on allocation of resources, legislative measures, advocacy campaigns and training of officials, law enforcement officers and medical personnel to combat violence against women.

Other issues

43. Further to the recommendations made by the Committee in its previous concluding observations (para. 10), please provide information on the steps taken to ratify the Optional Protocol to the Convention with a view to putting in place a system of regular,

[16] See A/HRC/WG.6/11/BEL/3, para. 23, 37 and 100.1.

[17] See CRC/C/BEL/CO/3-4, paras. 39–40;

[18] See CEDAW/C/BEL/CO/7, paras. 20–21; CRC/C/BEL/CO/3-4, paras. 39–40.

unannounced visits by national and international observers for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/18/3, para. 25).

44. Please also update the Committee on the steps taken to ratify the core United Nations human rights treaties to which the State party is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (A/HRC/18/3, paras. 100.1–100.6).

45. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, those anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training provided to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subject to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of those complaints.

General information regarding other measures and developments relating to the implementation of the Convention in the State party

46. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous periodic report that implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes and, in particular resources allocated and statistical data or any other information that the State party considers relevant.